

May 12, 2006

Darrell Williams
#26008-044
United States Penitentiary
P.O. Box 1000
Marion, IL 62959

Re: Formal Complaint 06-FC-69; Alleged Violation of the Access to Public Records Act by the Marion County Sheriff's Department

Dear Mr. Williams:

This is in response to your formal complaint alleging that the Marion County Sheriff's Department ("Department") violated the Access to Public Records Act by failing to disclose records to you. I find that the Department's response may have been untimely, but the Department has disclosed records to you.

BACKGROUND

You mailed two requests to the Department for certain records relating to your detention in the Department's jail on two different occasions. The date shown on your requests was March 8, 2006. You claim in your formal complaint that the Department failed to respond.

I sent a copy of your complaint to the Department. Sheriff Frank Anderson's counsel, Kevin Charles Murray, provided a response to your complaint. I enclose a copy of the letter for your reference. Mr. Murray also provided me copies of correspondence that Ms. Rachel Gohman of the Department sent to you, dated March 31, 2006 and April 21, 2006. In the March 31 letter to you, Ms. Gohman stated that she was providing you copies of all documents from your Jail Packet and copies of the case report and DHB decision, but declined to provide copies of the detective file as investigatory material. In the April 21 letter, Ms. Gohman responded to your second request for records relating to your confinement in the jail during October 2004. She was willing to provide specified information responsive to your request, but first requested that you send \$3.15, which is \$.04 per page for the materials.

Mr. Murray wrote on April 24, 2006 to me that the Department had recently received your follow-up request, to which Ms. Gohman's April 21 response related. It was unclear when the Department received your requests for records. You dated your complaint March 22, 2006.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A public agency that receives a request via U.S. Mail is required to issue a responsive letter

acknowledging receipt of the request within seven days of receipt. IC 5-14-3-9(b). It is not clear from the record before me when the Department received your two requests. Therefore, I cannot state whether the Department met the requirements of the APRA concerning timeliness of response. However, if the Department failed to issue a responsive letter to your requests within seven days of their receipt, the Department would have violated the APRA.

It appears that the Department has disclosed records to you and will disclose a second packet of material upon receipt of your payment for copies. Under the APRA, a public agency that is not a state agency may charge a fee for copies that does not exceed the actual cost of copies. IC 5-14-3-8(d). The Department's copy fee of \$.04 per page clearly does not exceed the actual cost of copies, which is defined as the cost of paper and the per-page cost for use of the copying equipment. IC 5-14-3-8(d). Also, the Department may require that the payment for copying costs be made in advance. IC 5-14-3-8(e).

Finally, the Department has stated that it is denying you a copy of the detective's file under IC 5-14-3-4(b). A more precise citation to the investigatory records exception is IC 5-14-3-4(b)(1). A public agency may, in its discretion, withhold investigatory records of law enforcement. "Investigatory record" means information compiled in the course of the investigation of a crime. IC 5-14-3-2(h). I do not know what is in a detective's file, but if the file contains records that were compiled in the course of a criminal investigation, the Department is within its rights to withhold it from you, under IC 5-14-3-4(b)(1).

CONCLUSION

For the foregoing reasons, I find that the Marion County Sheriff's Department responded untimely under the APRA only if its March 31 and April 21 responses were sent more than seven days after receiving the requests, but otherwise has complied with the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Kevin Charles Murray